

Final Order Denying Refund Number: 04-20170926R
Use Tax
For The Tax Periods November 2014 through December 2014

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Out-of-State Company was not entitled to an additional refund of use tax because it failed to substantiate its claim.

ISSUE

I. Use Tax - Refund.

Authority: IC § 6-8.1-9-1; [45 IAC 15-9-2](#); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012).

Taxpayer protests the partial refund denial of use tax which it remitted for tax periods November and December 2014.

STATEMENT OF FACTS

Taxpayer, an out-of-state company, provides diagnostic testing services both in Indiana and other states. On or about April 27, 2017, Taxpayer filed a refund claim, GA-110L form stating that it was entitled to a refund of use tax in the amount of \$11,800.47 that it claims it overpaid for the tax periods November 2014 and December 2014 ("Tax Periods at Issue"). Upon review, the Department granted in part and denied in part Taxpayer's refund claim. The Department granted a portion of the claim in the amount of \$6,988.58, and denied an amount totaling \$4,811.89, with the stated reason being that "November & December 2014 was underpaid after the adjustments. Some items purchased were taxable." The Department offset the partial refund in satisfaction of underpaid periods.

Taxpayer protested the partial refund denial. An administrative phone hearing was held. Taxpayer requested additional time to provide further explanation of the basis of its protest as well as documentation in support thereof, but it failed to provide any additional documentation. This Final Order Denying Refund results. Further facts will be provided as necessary.

I. Use Tax - Refund.

DISCUSSION

The Department reviewed and partially denied Taxpayer's refund claim. In Taxpayer's protest letter, Taxpayer requested an "explanation" of "variances" between the amount of the refund granted and the amount that Taxpayer received via check issued by the Department. Taxpayer also requested a "full review of the use tax transactions that were denied in November 2014 and December 2014." When asked for further explanation and documentation to substantiate the basis of its protest, Taxpayer stated that it would provide supplemental documentation, but failed to do so.

IC § 6-8.1-9-1(a) affords a taxpayer a statutory right to file a claim for refund if the taxpayer determines that the taxpayer has paid more tax than the amount is legally due for a particular taxable period. To obtain the refund, the taxpayer is required to file the claim with the Department within three (3) years from the date of payment if that date is later than the due date of the return. "The claim must set forth the amount of the refund to which the person is entitled and the reasons that the person is entitled to the refund." *Id.* See also [45 IAC 15-9-2](#). In this instance, Taxpayer timely filed the refund claim concerning the use tax it paid for the Tax Periods at Issue. Therefore, the issue is whether Taxpayer was entitled to a full refund of the use tax it claimed it overpaid.

Although Taxpayer requested additional time to submit additional supporting documentation to explain and support its protest, it failed to do so as the Department finalizes this Decision. Taxpayer was provided over two months from the date it assured the Department it would provide the additional documentation. As a result, this Decision addresses Taxpayer's protest based on the documentation within the protest file.

In this instance, Taxpayer claimed that it overpaid the use taxes. Upon review, however, the Department is not able to agree that Taxpayer demonstrated that it was entitled to an additional refund because there was no overpayment. Specifically, the Department's records showed that Taxpayer had underpaid use tax for the Tax Periods at Issue. Department records show that a portion of the refund that was granted was offset by the amounts that were underpaid. Moreover, Taxpayer filed amended ST-103 Sales & Use Tax returns for the Tax Periods at Issue *after* filing its refund claim. These amended returns were processed by the Department as filed.

The Department notes that Taxpayer has provided no documentation or explanation to suggest, let alone establish, that the Department made an error in the processing of its refund claim or its amended returns. Taxpayer has not presented a sufficiently developed or cogent argument for the Department to address, and has therefore been waived. See *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 485 n.9, (Ind. Tax Ct. 2012) (stating in a footnote parenthetical "*that poorly developed and non-cogent arguments are subject to waiver*" by the Indiana Tax Court) (*citing Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax. Ct. 2010)) (*emphasis added*). The protest process is not for the purpose of "explaining" to Taxpayer how its returns or refunds were processed in the absence of a clearly stated argument supporting its protest.

In short, given the totality of the circumstances, *in the absence of other verifiable supporting documents and presentation of a cogent argument*, Taxpayer was not entitled to any additional refund and its claim was properly denied.

FINDING

Taxpayer's protest is respectfully denied.

February 6, 2018

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